

# DEEK DEPOSITION EXCERPTS

1 quite a bit of the article, yes.

2 BY MR. KELLY:

3 Q I'm going to put up Exhibit No. 1 again for  
4 you. All right?

5 A Sure.

6 Q Is Exhibit No. 1 freely available to you  
7 again?

8 MR. HAEFNER: Yes.

9 BY MR. KELLY:

10 Q Dr. Deek, you authored this letter.  
11 Correct?

12 A I did not.

13 Q You did not author this letter?

14 A I signed the letter. Right.

15 Q You signed it?

16 A Right.

17 Q Who did you rely upon to author -- who  
18 authored this letter, to your knowledge?

19 A In this case, this is the date's out of  
20 view, this was provided to my assistant to --  
21 September 25th -- by University counsel.

22 Q Oh. Was it Ms. Holly Stern who authored  
23 this?

24 MR. HAEFNER: Objection to the form.  
25 He's not going to discuss what counsel did and didn't

1 do.

2 MR. KELLY: Well, he just said  
3 university counsel provided this.

4 MR. HAEFNER: He said it was provided  
5 to his assistant from --

6 MR. KELLY: No. That's not correct,  
7 Mr. Haefner.

8 BY MR. KELLY:

9 Q Let me get at it. To your knowledge, Dr.  
10 Deek, who authored this letter?

11 MR. HAEFNER: Objection to the extent  
12 it would reveal attorney/client privilege, you're  
13 instructed not to answer. Otherwise, you can answer.

14 MR. KELLY: He's shaking his head.  
15 What does that mean?

16 THE WITNESS: I am taking my counsel  
17 from counsel not to answer.

18 BY MR. KELLY:

19 Q You're taking the advice of counsel, and  
20 you're not going to answer who authored this letter.  
21 But you're saying it wasn't you. Is that right?

22 A I already said it wasn't me. It wasn't, and  
23 I will repeat. 'Cause that fact I know. It was not  
24 me.

25 Q Okay. It was an attorney --

1           A     In general, Mr. Kelly, in general on  
2     appointing and terminating, on renewing, non-renewing,  
3     and in letters like this, they are not authored by my  
4     office. We obtain those from other offices.

5           Q     And you obtained this letter from counsel  
6     somewhere. Is that right?

7                     MR. HAEFNER: Objection to the form of  
8     the question. Calls for privileged information.

9                     MR. KELLY: It does not call for  
10    privilege. Please mark that for a ruling. We'll  
11    certify that one for the court. I think we're going  
12    to have a lot of that today, but we'll have to just  
13    get through it as best we can.

14   BY MR. KELLY:

15           Q     Nevertheless, despite not authoring this  
16    letter, you did sign it, Dr. Deek. Correct?

17           A     Absolutely. That's my signature. Yes.

18           Q     Right.

19           A     It's my -- it's my electronic signature.  
20    It's my -- yeah. But that's me, of course. It's  
21    provided to my assistant to use. Yes. On University  
22    business.

23           Q     I see. Your assistant would have been Cara  
24    Bartolomeo. Is that right?

25           A     No. That's a different assistant.

1 Q It says, "Plaintiff's claims are barred or  
2 otherwise fail because at all relevant times, NJIT:  
3 one, published, disseminated and enforced a neutral  
4 policy regarding disclosure of outside activities and  
5 conflicts of interests; and two, plaintiff  
6 unreasonably failed to follow NJIT's policy."

7 Is that correct?

8 A My understanding that that is correct.

9 Q And that's what you're asserting in this  
10 lawsuit. Correct?

11 A Right.

12 Q Now, in support of that defense, that's a  
13 defense based upon alleged OAQ violations. Correct?

14 A Yes. I believe so.

15 Q You are relying upon the Saiber report of  
16 February 2018. Is that correct?

17 MR. HAEFNER: Objection to the form of  
18 the question. You can go ahead and answer.

19 THE WITNESS: Yes. Yes.

20 BY MR. KELLY:

21 Q Is there anything you don't understand about  
22 that question?

23 A No.

24 Q Along with the advice of Holly Stern.  
25 Correct?

1 MR. HAEFNER: Objection to the form of  
2 the question. You can go ahead and answer.

3 BY MR. KELLY:

4 Q Let me rephrase it. You were also relying  
5 for that defense on the advice of Holly Stern.  
6 Correct?

7 MR. HAEFNER: The witness is instructed  
8 not to answer about advice from counsel.

9 MR. KELLY: Please mark that for a  
10 ruling to certify that question. To be clear, at this  
11 point, I'm not asking what her advice was. I just  
12 want to confirm that he relied upon that advice and  
13 that NJIT has relied upon that advice.

14 Do you understand that, Mr. Haefner?

15 MR. HAEFNER: I understand.

16 MR. KELLY: And you're still directing  
17 him not to answer?

18 MR. HAEFNER: Correct.

19 BY MR. KELLY:

20 Q Okay. Now, going down to page 15 of the  
21 answer, Dr. Deek. Do you see that?

22 A Yes, sir.

23 Q Okay. On page 15, there's a fifteenth  
24 separate defense of avoidance. Correct?

25 A What's the question?

1 Q The question is: Do you see that?

2 A Oh, yeah. I do see it. Yes. Yes.

3 Q The one that reads, "No award of punitive  
4 damages is supported as a matter of law because  
5 defendant's alleged actions and inactions were not  
6 willful, wanton, malicious, especially egregious or  
7 with a reckless disregard for plaintiff's statutory or  
8 other rights." Correct?

9 A Correct.

10 Q And you don't maintain that NJIT's actions  
11 were willful or in reckless disregard -- strike that.  
12 Do you disagree that the actions of NJIT amount to  
13 willful or reckless disregard of plaintiff's First  
14 Amendment rights. Correct?

15 MR. HAEFNER: Objection. Compound.  
16 You can go ahead and answer.

17 THE WITNESS: Correct.

18 BY MR. KELLY:

19 Q Let me break it down, then. You dispute  
20 that defendant's actions were willful or malicious.  
21 Correct?

22 A Correct.

23 Q And you dispute that defendant's actions --  
24 I said defendants last time, right? Defendant's  
25 actions?

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1 MR. HAEFNER: I'm not sure, Mr. Kelly.

2 BY MR. KELLY:

3 Q Okay. I'll ask it again. Dr. Deek, you  
4 dispute the defendant's actions were willful and  
5 wanton. Correct?

6 A Correct.

7 Q And you dispute that the defendants acted in  
8 reckless disregard with plaintiff's First Amendment  
9 rights. Correct?

10 A Correct.

11 Q And in making that argument, you have relied  
12 upon the advice of Holly Stern. Correct?

13 MR. HAEFNER: Objection to the form of  
14 the question -- or not to the form. Instruct the  
15 witness not to answer the question.

16 MR. KELLY: Please mark that for a  
17 ruling as well. I'd like to certify the question.

18 BY MR. KELLY:

19 Q Furthermore, in disputing that your actions  
20 were in reckless disregard of plaintiff's First  
21 Amendment rights, you have also relied upon the Saiber  
22 report of February 9, 2018. Correct, Dr. Deek?

23 A The what? The what?

24 MR. HAEFNER: Saiber report.

25 THE WITNESS: Yes, sir.



1 BY MR. KELLY:

2 Q Do you see the seventh and eighth  
3 affirmative defenses on page 14 of Exhibit 10?

4 A I do.

5 Q And they state that a decision -- well,  
6 correct me if I'm wrong -- withdrawn. Regarding the  
7 eighth affirmative defense, it states that the  
8 decision not to renew the plaintiff was legitimate and  
9 non-retaliatory. Is that correct?

10 A Yes, sir.

11 Q And the basis for that is, again, the Saiber  
12 report of February 9, 2018. Correct?

13 MR. HAEFNER: Objection to the form of  
14 the question. You can go ahead and answer.

15 THE WITNESS: Yes.

16 BY MR. KELLY:

17 Q Did you also rely on the advice of Holly  
18 Stern?

19 MR. HAEFNER: Objection. Witness is  
20 instructed not to answer.

21 MR. KELLY: Please mark that one for a  
22 ruling, as well. I'd like to certify that question  
23 for a ruling on later.

24 BY MR. KELLY:

25 Q Now, you've also asserted in the seventh

1           Q     You maintain you did not knowingly violate  
2     the law. Correct?

3           A     Let me rephrase this. No. I don't want to  
4     rephrase anything. You said I did not know that we  
5     violated the law? Is that what you said?

6           Q     I want to make sure I have your defense  
7     correct. You are asserting in this lawsuit that you  
8     have not knowingly violated the law. Correct?

9           A     That's correct. We did not knowingly  
10    violate the law. Yes.

11          Q     Okay. But the law can be kind of  
12    complicated. Correct?

13          A     I think so. Like most laws. Yes, sir.

14          Q     And you indicated earlier that when you have  
15    an issue of sensitivity or complexity, you turn to  
16    other people to help you determine the best course of  
17    action. Correct?

18          A     That's correct. I am the chief academic  
19    officer. My secondary title, the executive vice-  
20    president, makes me the chief operating officer.  
21    There is much more to running a university than that.  
22    And therefore, I consult with others. Yes, sir.

23          Q     And amongst those people you consult with  
24    are Holly Stern. Correct?

25          A     Correct.

1           Q     And you consulted with her to make sure you  
2 did not knowingly violate the law with regard to Jason  
3 Jorjani. Correct?

4           MR. HAEFNER: Witness is instructed not  
5 to answer the question.

6           MR. KELLY: Please mark that for a  
7 ruling. I'd like to have that question certified.

8 BY MR. KELLY:

9           Q     By the way -- you'll correct me if I'm  
10 wrong, Dr. Deek -- but Saiber was not the only outside  
11 law firm that NJIT consulted with to determine the  
12 appropriate course of action with regard to Jorjani.  
13 Was it?

14          MR. HAEFNER: You can answer "yes" or  
15 "no" or "I don't know."

16          THE WITNESS: I don't know.

17 BY MR. KELLY:

18          Q     Okay. If I showed you your privilege log  
19 listing other attorneys, would that refresh your  
20 recollection?

21          A     It might remind me what firm, yes, they are  
22 from. Because I obviously do recall meeting with  
23 attorneys, but I don't know if they were all from one  
24 firm.

25          Q     I appreciate that.

1 A To be frank.

2 Q Yes. I'm attempting to show you what was  
3 marked previously as plaintiff's Exhibit No. 1. It's  
4 defendant's ESI privilege log dated January 28, 2020.  
5 The font is very small. But can you see that?

6 MR. HAEFNER: Yes.

7 BY MR. KELLY:

8 Q Okay. Let me maximize it a little bit.  
9 I've got it up to 200 percent. Is that more legible?

10 MR. HAEFNER: Yes.

11 BY MR. KELLY:

12 Q Okay. If we scroll down, page 8. Looking  
13 at entries for 124 on, they indicate that Holly Stern  
14 consulted with Trish O'Reilly of the Walsh Law Firm  
15 and Trevor Lyons of the Walsh Law Firm on or about  
16 September 21, 2017. Correct?

17 A Trish et al. is correct. I remember that.

18 Q And that's Mr. Haefner's law firm. The one  
19 that's defending you today. Correct?

20 A Yes.

21 Q Did the Walsh Pizzi law firm help to  
22 formulate your response to the Jason Jorjani  
23 situation?

24 MR. HAEFNER: Objection. Witness is  
25 instructed not to answer.

1 MR. KELLY: I'm just asking if he  
2 consulted with you. It's right there on your  
3 privilege log there, sir. What's objectionable?

4 MR. HAEFNER: He said that there's been  
5 consultation.

6 MR. KELLY: Right.

7 MR. HAEFNER: You asked, "Did they  
8 formulate a response," which is the substance of  
9 the --

10 MR. KELLY: No. I didn't ask what the  
11 substance of the response was. Right? I'm just  
12 asking what the subject of the inquiry was.

13 MR. HAEFNER: The subject of the  
14 inquiry is response to Leibel's [ph] New York Times  
15 article. That's why it's the subject line of the  
16 email.

17 MR. KELLY: That's right. And that was  
18 only the Jorjani article. Right?

19 MR. HAEFNER: I mean, the witness is  
20 not going to testify about what the privilege says,  
21 Mr. Kelly.

22 MR. KELLY: No, no. I want to make  
23 sure that I've appropriately identified the elements  
24 here. And I need to know what the subject matter was.  
25 That's right there in the local rule.

1 BY MR. KELLY:

2 Q When it says "Response to Leibel's New York  
3 Times article," that means the Jorjani op-ed that we  
4 discussed earlier. Correct, Dr. Deek?

5 MR. HAEFNER: He can answer. I mean,  
6 you're asking what he thinks that means. He can  
7 answer what he thinks it means.

8 THE WITNESS: Correct.

9 BY MR. KELLY:

10 Q So without saying what it was they advised  
11 you to do, it remains true that the Walsh Pizzi Law  
12 Firm helped to formulate the response to Jorjani's  
13 situation. Correct?

14 MR. HAEFNER: But you've built into the  
15 question, "helped to formulate the response."

16 MR. KELLY: That's right.

17 MR. HAEFNER: Which is the legal  
18 advice.

19 MR. KELLY: No, no, no. I didn't say  
20 "what steps did they actually take?" Or "what steps  
21 did they advise you to take." I just want to know  
22 that they helped you formulate the response.

23 MR. HAEFNER: Witness is instructed not  
24 to answer the question.

25 MR. KELLY: Mark that for a ruling. I